2001

State of Utah v. Keith Roy Black : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff-Appellee,	:	Case No. 20010907-CA
v.	:	
KEITH ROY BLACK,	:	
Defendant-Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM CONVICTION FOR CRIMINAL NON-SUPPORT, A THIRD DEGREE FELONY, IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, THE HONORABLE PAUL A. MAUGHAN PRESIDING

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BRIEF OF APPELLEE

JURISDICTION AND NATURE OF THE PROCEEDINGS

Defendant appeals his conviction for criminal non-support, a third degree felony, in violation of UTAH CODE ANN. § 76-7-201 (1999), in the Third Judicial District Court, Salt Lake County, the Honorable Paul A. Maughan presiding. This Court has jurisdiction pursuant to UTAH CODE ANN. § § 78-2a-3(2)(e) (1996).

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. **Affirmative defense.** Did defendant raise a reasonable doubt that he was medically able to support his daughter, where neither defendant nor any other witness testified that defendant's health rendered him unable to do so?

In the context of a trial involving an affirmative defense, this Court will sustain the trial court's judgment against a sufficiency challenge "unless it is against the clear weight of

the evidence." *State v. Coonce*, 2001 Utah App. ¶ 3, 36 P.3d 533 (citations and internal quotation marks omitted) (self-defense case).

2. **Amended information.** Did amending the information on the day of trial prejudice defendant? Because this claim must be rejected as inadequately briefed, no standard of review applies.

3. **Sufficiency.** Was the trial evidence sufficient to exclude beyond a reasonable doubt defendant's defense of inability to pay? Because this claim must be rejected as inadequately briefed, no standard of review applies.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Resolution of this case requires interpretation of the following statute:

Utah Code Ann. § 76-7-201 (1999) Criminal nonsupport.

> (1) A person commits criminal nonsupport if, having a spouse, a child, or children under the age of 18 years, he knowingly fails to provide for the support of the spouse, child, or children when any one of them:
>
> (a) is in needy circumstances; or
>
> (b) would be in needy circumstances but for support received from a source other than the defendant or paid on the defendant's behalf.
>
> (2) Except as provided in Subsection (3), criminal nonsupport is a class A misdemeanor.
>
> (3) Criminal nonsupport is a felony of the third degree if the actor:
>
> . . .
>
> (c) commits the crime of nonsupport in each of 18 individual months within any 24-month period, or the total arrearage is in excess of $10,000.
>
> . . .
>
> (5) (a) In a prosecution for criminal nonsupport under this section, it is an affirmative defense that the accused is unable to provide support. Voluntary unemployment or underemployment by the defendant does not give rise to that defense.

STATEMENT OF THE CASE

Defendant was charged by Information filed 12 October 1999 with criminal non-support, a third degree felony, in violation of UTAH CODE ANN. § 76-7-201 (1999). R. 3-6. Defendant was bound over following a preliminary hearing. R. 28-29. An Amended Information was filed on 14 April 2000. R. 48-50. After a second preliminary hearing, the court granted the State's motion to amend the Information. R. 63-65. On or about 15 June 2000, the State filed a Second Amended Information. R. 92-94. This second amendment shortened the charging period: the charging period in the Amended Information was 1 January 1998 through 1 August 2000, R. 48; the charging period in the Second Amended Information was 1 January 1998 through 26 November 1999. R. 92. In addition, at trial the Second Amended Information was amended by interlineation to substitute "or" for "and" between the two predicate conditions for charging felony non-support, i.e., that the defendant knowingly failed to support his child for 18 months within a 24-month period, *and* that defendant's total child support arrearage was in excess of $10,000. R. 48, 92, 105, 200-02.

On 19 June 2001, two days before trial, defendant filed his Notice of Affirmative Defense announcing that he would be asserting that he "is and has been unable to provide

support." R. 95.[1] Defendant was found guilty after a one-day bench trial on 21 June 2000. R. 105-107.

On 12 July 2001, defendant filed a Memorandum in Support of Motion for New Trial asserting four arguments, including that the trial court had unlawfully shifted to defendant the burden of proof. R. 125-29.

A sentencing hearing was held on 14 September 2001. R. 245. In that hearing, the court denied a new trial. R. 284: 15.

Prior to sentencing, defendant's ex-wife implored the court to incarcerate defendant in keeping with his statement to her that he would "ROT IN JAIL, RATHER THAN PAY CHILD SUPPORT." R. 149. She further stated that "continuing to live with the fear of Mr. Black[']s threat to 'KILL ME IF I GET ONE DIME OF HIS MONEY' would be equivalent to my being incarcerated." R. 148 (capitalization in original). Nevertheless, the sentencing court suspended defendant's prison term of zero to five years, suspended the $5,000 fine, and sentenced defendant to 180 days in jail, 36 months probation, and restitution of $4,249.24. R. 285-87.

Defendant timely appealed. *See* R. 275.

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[1] Defendant's notice was untimely under Utah Code Ann. § 76-7-201(b) (1999), which requires a defendant to "file and serve on the prosecuting attorney a notice, in writing, of his intention to claim the affirmative defense of inability to provide support" not less than 20 days before trial.

STATEMENT OF FACTS[2]

A full statement of the facts of the case is impossible because the record on appeal is incomplete. It is incomplete because defendant-appellant requested the court reporter to transcribe, and the clerk to transmit, only the "Defense Portion of Trial" rather than the entire trial. R. 300. What follows is a summary of evidence presented after the State rested in its case-in-chief.

State's case in chief. This Court will presume that the evidence presented in the State's case in chief established a prima facie case against defendant. This is so because "the appellant has the burden of providing the reviewing court with an adequate record on appeal to prove his allegations." *Call v. City of West Jordan*, 788 P.2d 1049, 1052 (Utah App.), *cert. denied*, 800 P.2d 105 (Utah 1990). If the appellant fails to carry this burden, the reviewing court will assume the regularity of the proceedings below. *Jolivet v. Cook*, 784 P.2d 1148, 1150 (Utah 1989), *cert. denied*, 493 U.S. 1033 (1990); *State v. Blubaugh*, 904 P.2d 688, 699 (Utah App. 1995), *cert. denied*, 913 P.2d 749 (Utah 1996).

Defense case. Defendant testified in his own defense. He testified that he had worked "full time" as a self-employed mortgage broker since 1992. R. 300: 9-10, 14. He testified that he earned $21,682 in 1996, $20,659 in 1997, $8,177 in 1998, "I believe it was a minus 2,000" in 1999, and $189 in 2000. R. 300: 12.

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[2] This brief recites facts from the record in the light most favorable to the jury's verdict. *See State v. Verde*, 770 P.2d 116, 117 (Utah 1989).

Defendant testified he was diagnosed with diabetes "in 1993, I believe," and that it had worsened and "interfered with [his] work." R. 300: 14. However, asked to explain his reduced income, he did not mention any health concerns, but responded, "Well, the costs of getting a business going plus the market has switched, has caused a loss in income." R. 300: 11. Asked again why his income had dropped off in recent years, defendant answered, "Well, when I started my business, I had costs that I had to—to pay for, so I—I didn't have the income base—I basically had the income to pay my costs of business and barely to live on and the market also has swung during that period of time, which makes a difference on how well business—how much business you can do." R. 300: 14-15.

When defense counsel asked defendant to address how his physical ailment had interfered with his ability to work as a mortgage broker, defendant explained that he tires easily and a foot infection prevented him from working for two months. R. 300: 15.

On cross-examination the prosecutor asked defendant "why were you not able to make the other payments to your child?" R. 300: 25. Again, defendant did not cite any medical condition, but responded, "By the time I took care of my own living expenses, I didn't have any income left to go anywhere else." R. 300: 25. When asked about his daughter, he agreed that he was "putting [his] needs ahead of hers." R. 300: 25.

Finally, the prosecutor asked, "And is it your testimony that it's because of these conditions you've alluded to that you have been unable to provide enough to support Heidi

during the time period charged?" R. 300: 29. Defendant's answer was equivocal: "That—they've—they've hindered being able to, sure." R. 300: 29.

Defendant admitted to having been convicted of forgery in 1999. R. 300: 27.

Defendant's current wife testified that he was "trying to control his sugar level with his diet," and experienced "mood changes"; she confirmed that he "work[s] at his business every day." R. 300: 32.

State's rebuttal. Defendant's ex-wife, Heather Black, testified to an incident in which defendant had recently helped their daughter, Heidi, move back to Ms. Black's home. Ms. Black stayed in her truck "and let him load it" with Heather's belongings. R. 300: 37. Asked how defendant appeared at that time, she answered, "Healthier than I've seen him look in 20 years." R. 300: 37. Unlike the time of trial, he had no crutches with him. R. 300: 37, 58. Defendant loaded around twenty large moving boxes into the back of Ms. Black's pickup truck. R. 300: 37-38.

A representative of the Office of Recovery Services testified that all contacts with defendant had been logged, including telephone conversations. R. 300: 41-43. Defendant's file contains records of 12 telephone calls during and after 1996, including one in 1999 in which ORS warned that the case was "going to go criminal." R. 300: 47-48. Yet in none of these conversations did defendant mention "a health issue or an illness that would prevent him from working. There were no discussions regarding disability applications or anything . . ." R. 300: 43-44, 47.

The court received by proffer the testimony of Eric Tolman, an officer with Adult Probation & Parole who prepared the presentence report on defendant's forgery conviction between February and March of 1999. R. 300: 52. The PSI states that defendant reported that he currently works "not enough hours a week." R. 300: 52. Defendant reported "having specific work skills in the areas of carpentry, mechanics and people skills," and "certificates and licenses in the areas of real estate and mortgage brokering." R. 300: 53. He "did not report any limitations which might affect the type of work he could do." R. 300: 53.

Defense surrebuttal. On surrebuttal defendant claimed to have mentioned his supposed medical condition to the ORS, but could cite no specifics. R. 300: 55-56. He also asserted that he did not mention "any medical condition" to AP&P because "I just didn't feel it was that important." R. 300: 57.

Asked whether his crutches were with him at the time he loaded the boxes into Ms. Black's pickup truck, defendant answered that they were not and offered this tortuous explanation: "And the reason why is the car was stuffed, trunk[-]wise, and all inside, there was no room for them and I had no intentions of—of helping Heidi move her stuff into the car. I didn't even load her stuff in the car, she loaded it all in." R. 300: 59. He continued: "So, I had no intentions, I was just going down to ride down with her and then—and then come back." R. 300: 59.

On cross-examination defendant explained that he is living on alimony and child support paid to his current wife. R. 300: 60-61.

SUMMARY OF ARGUMENT

Although at trial the court seemed to cast upon defendant the burden of proving his affirmative defense, at the hearing on the motion for new trial the court clarified its earlier ruling and correctly articulated the law pertaining to affirmative defenses: the defendant has no burden of proof, but once he offers sufficient evidence of an affirmative defense to raise a reasonable doubt as to his guilt, the State must refute that evidence or risk acquittal.

The court was correct that defendant failed to adduce any evidence that his medical condition renders him unable to support his child. Neither defendant nor his wife nor any other witness testified to that effect. Although he was asked repeatedly why his income had dropped off precipitously during the charged period, defendant never cited his health as a reason.

Assuming arguendo that defendant had presented sufficient evidence to raise a reasonable doubt, the State eliminated that reasonable doubt on rebuttal. Ms. Black's testimony showed defendant to be able-bodied. Moreover, in his many dealings with ORS and AP&P, defendant never claimed that his health prevented his paying child support. In fact, he did not rely on this excuse even when ORS told him they were about to refer his case for prosecution.

The reality is that defendant, a convicted forger, is living off his current wife's alimony and child support and, as he admits, put his needs ahead of his daughter's.

Defendant's second and third points must be rejected as inadequately briefed.

ARGUMENT

POINT I

WHERE DEFENDANT WAS LIVING OFF ALIMONY AND CHILD SUPPORT PAID TO HIS CURRENT WIFE AND NEVER CLAIMED TO BE UNABLE TO EARN A LIVING, THE TRIAL COURT CORRECTLY RULED THAT HE HAD FAILED TO RAISE THE AFFIRMATIVE DEFENSE OF INABILITY TO PROVIDE SUPPORT

Defendant contends that the trial court erroneously ruled against his defense of inability to pay. Br. Aplt. at 4-8. Specifically, defendant argues that (1) at trial, the court erroneously shifted to him the burden of proving the affirmative defense of inability; and (2) in denying his motion for new trial, the court erroneously found that defendant had failed to raise the defense of inability. Br. Aplt. at 4-5.

Proceedings below. This was a bench trial. At its conclusion, the trial court ruled as follows:

> As I read the statute, there is an affirmative defense in this. I believe that when the affirmative defense raised in Section 76-7-201(5), that **the burden then shifts to—to the defendant in order to establish the affirmative defense**. The statute provides that voluntary unemployment or under-employment does not give rise to that defense.
>
> I'm not persuaded that the defendant has carried the burden in this case. He's said that he's sick, he's been in the hospital two days in 1994, but as the prosecution indicated, we're—we have nothing but self-serving statements.
>
> We do have income tax returns but I—but I don't believe, Mr. Bucher, that you've overcome this burden of under-employment or alternative employment or even establishing a medical condition during the time charged in the Information.

R. 300: 68-69 (emphasis added). Prior to sentencing, the trial court addressed the issue again in the context of defendant's motion for new trial, stating "I previously and—indicated that it's my belief that I didn't require a shifting of the burden of proof to you or your client in this matter." R. 284: 12. After reviewing some relevant cases and its own statement at trial (quoted above), the trial court explained:

> I believe that that language [in the court's ruling at trial] is in accord and it's almost verbatim with what is stated in *State v. Lopez*, that the party with the burden of pleading an affirmative defense has **the burden of going forward with evidence sufficient to raise the issue.**[3]
>
> Then I continue from the record from the trial, quote: I am not persuaded that the defendant has carried the burden in this case. I don't believe, Mr. Bucher, that you have overcome this burden of under-employment or even established a medical condition.
>
> What I was saying is, I don't believe that there—I believe that there is a burden in establishing an affirmative defense, that it can't be raised in a vacuum, that it has to be raised in some contextual, factual framework. Absent that, it has not been sufficiently raised and not supported by some evidence as the case law requires; therefore, **the State is not under any burden to prove beyond a reasonable doubt or disprove beyond a reasonable doubt the affirmative defense if you didn't raise it. And I'm finding that you did not raise it at the time of trial.**
>
> There was no evidence that—I think the State would concede that Mr. Black has diabetes, but that alone, in a vacuum, without a context, is not sufficient to raise an affirmative defense.

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[3] The court was apparently referring to the statement that the "party with [the] burden of pleading [an] affirmative defense has [the] burden of going forward with evidence sufficient to raise [the] issue," *State v. Lopez*, 831 P.2d 1040, 1049 (Utah App. 1992) (summarizing the rule of *State v. Marshall*, 791 P.2d 880, 886 (Utah App.), *cert. denied*, 800 P.2d 1105 (Utah 1990)), *affirmed in part and vacated in part* 873 P.2d 1127 (Utah 1994).

> As I stated in an earlier hearing, there are some people that are debilitated by diabetes, some die young, some live normal, healthy lives. **And there is nothing in this case to indicate what Mr. Black's status is, if there's a disability or not merely because he has the disease.**
>
> So, I find that you did not sufficiently raise an affirmative—that **you didn't establish an affirmative defense supported by any evidence.**

R. 284: 13-14 (emphasis added). Based on the foregoing, the court denied defendant's motion for new trial. R. 284: 15.

Applicable law. In Utah, the burden is not on defendants to prove affirmative defenses at trial, but upon the State to disprove them beyond a reasonable doubt. *State v. Hill*, 727 P.2d 221, 222 (Utah 1986).[4] Utah cases have variously described the quantum of evidence the defendant must adduce to trigger the State's duty to disprove self-defense or other the affirmative defense. *See, e.g., State v. Swenson*, 838 P.2d 1136, 1138 (Utah 1992) ("some evidence"); *State v. Garcia*, 2001 UT App 19 ¶ 8, 18 P.3d 1123 ("sufficient evidence that his assertion of self-defense rises to a conscious level in the minds of jurors"). However, the clearest conception of defendant's "burden" is that it is merely the converse of the State's duty to exclude all reasonable doubt. Hence, the State's duty to introduce evidence disproving an affirmative defense is not triggered until some evidence, whether introduced by the State or by the defendant, raises a reasonable doubt.

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[4] The rule is not universal. For example, in the federal system "[t]he defendant has the burden of proving the defense of insanity by clear and convincing evidence." 18 U.S.C. § 17(b).

The Utah Supreme Court stated in *State v. Knoll*, 712 P.2d 211, 215 (Utah 1985), "As a practical matter, a defendant may have to assume the burden of producing some evidence of self-defense if there is no evidence in the prosecution's case that would provide some kind of evidentiary foundation for a claim of self-defense." The court continued, "But there need only be 'sufficient evidence of [the defendant's] justification to create in the minds of the jury a reasonable doubt of his culpability for the offense charged.'" *Id.* (quoting *State v. Harris*, 58 Utah 331, 199 P. 145, 147-48 (Utah 1921)).

The rule is not new. In *State v. Vacos*, 120 P. 497 (Utah 1911), a murder case, the supreme court stated:

> All that [a defendant] is required to do is to produce **sufficient evidence** of justification or excuse which, when considered with all the other evidence in the case, will **create a reasonable doubt** in the minds of the jurors whether the homicide in question was justified or excusable or not. In other words, if, upon a consideration of all the evidence in the case, including that offered in justification or excuse, the jurors entertain a reasonable doubt of the guilt of the accused, he is entitled to a verdict of acquittal at their hands.

Id. at 502 (emphasis added).

In sum, a defendant "need not prove the defense beyond a reasonable doubt, by clear and convincing evidence, nor even by a mere preponderance. He need only create a reasonable doubt as to his guilt." *State v. Moritzsky*, 771 P.2d 688, 691 n.2 (Utah App. 1989). Once he does, of course, the State must eliminate that reasonable doubt or risk an acquittal.

A. Read as a whole, the trial court's ruling correctly required defendant only to adduce evidence sufficient to create a reasonable doubt that he was able to provide for his child.

At the trial's conclusion, the court stated that "when the affirmative defense raised in Section 76-7-201(5), that the burden then shifts to—to the defendant in order to establish the affirmative defense." R. 300: 69. This statement seems incompatible with the governing legal authorities.

However, the court clarified this statement in ruling on defendant's new trial motion: "What I was saying is, I don't believe that there—I believe that there is a burden in establishing an affirmative defense, that it can't be raised in a vacuum, that it has to be raised in some contextual, factual framework." R. 284: 13. It continued, "Absent that, it has not been sufficiently raised and not supported by some evidence as the case law requires; therefore, the State is not under any burden to . . . disprove beyond a reasonable doubt the affirmative defense if you didn't raise it." R. 284: 13-14.

This is a correct statement of the law. The court placed the burden squarely on the State to disprove the defendant's claimed affirmative defense beyond a reasonable doubt. However, the court ruled, because defendant failed to introduce sufficient evidence to raise a reasonable doubt as to his ability to pay, there was in effect nothing for the State to rebut.

Consequently, the court applied the correct legal standard.

B. Defendant's testimony failed to raise a reasonable doubt that he was able to provide for his child.

Defendant insists that he sufficiently raised the affirmative defense of his inability to provide support. Br. Aplt. at 7. On the contrary, the evidence he presented at trial did not create a reasonable doubt as to his ability to pay.

Defendant testified that he was diagnosed with diabetes in 1993; he also testified that his income dropped off precipitously after 1997. R. 300: 12, 13-15 (quoted in Br. Aplt. at 7). However, as the trial court correctly noted, defendant presented no evidence that his loss of income was a result of a medical inability to earn. *See* R. 284: 13-14. On the contrary, when asked to explain his diminished income he did not cite any medical condition, but "the costs of getting a business going" and downturns in the market, R. 300: 11, 14-15. When asked why he was "not able to make the other payments to your child?" he did not cite any medical condition, but responded, "By the time I took care of my own living expenses, I didn't have any income left to go anywhere else." R. 300: 25. In short, defendant chose to put his needs ahead of hers. R. 300: 25.

Defendant never claimed at trial that his medical condition or anything else rendered him unable to provide support. The furthest he ever went was in response to a question whether his medical conditions left him unable to support Heidi during the charged period: "That— they've—they've hindered being able to, sure." R. 300: 29. Thus, defendant's own testimony that he was *hindered* in providing support fell short of even alleging the statutory defense, which requires a showing "that the accused is *unable* to provide support." Utah

Code Ann. § 76-7-201(5)(a) (1999) (emphasis added). His current wife's testimony added nothing. Although she testified that he was "trying to control his sugar level with his diet," and experienced "mood changes," she confirmed that he "work[s] at his business every day." R. 300: 32. She drew no nexus between defendant's health and his crime.

Accordingly, the trial court correctly ruled that defendant had failed to adduce sufficient evidence to raise a reasonable doubt that he was able to provide support.

Even assuming arguendo that defendant's evidence was sufficient to raise a reasonable doubt as to his ability to pay, he still is not entitled to reversal of his conviction. The State's rebuttal evidence devastated defendant's weak defense. Defendant's ex-wife, Heather Black, testified that when she witnessed defendant load around twenty large moving boxes into her pickup truck he looked "[h]ealthier than I've seen him look in 20 years." R. 300: 37-38. A representative from the Office of Recovery Services testified that in numerous contacts with that office concerning defendant's failure to pay child support, he had never mentioned "a health issue or an illness that would prevent him from working" R. 300: 43-44, 47. Finally, the parties stipulated that the AP&P officer who prepared the presentence report on defendant's forgery conviction during the charged period would testify that defendant admitted that he currently works "not enough hours a week" but "did not report any limitations which might affect the type of work he could do." R. 300: 52-53.

In sum, the trial court reasonably rejected defendant's argument that the trial testimony raised a reasonable doubt that he was able to provide for his daughter.

POINT II

DEFENDANT'S CLAIM CHALLENGING THE AMENDMENT TO THE INFORMATION IS INADEQUATELY BRIEFED

Defendant contends that "[t]he filing of a Second Amended Information on the day of trial was improper in that it alleged a time period of 23 months instead of the statutorily mandated 24 months." Br. Aplt. at 3. This claim fails because it is inadequately briefed.

The Utah Rules of Appellate Procedure require that the argument portion of appellant's brief "shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on." Utah R. App. P. 24(a)(9). A brief that contains relevant legal authorities, but pays "scant attention" to the facts and provides "no actual analysis of those facts in light of the legal authorities excerpted" does not comply with rule 24(a)(9). *Demetropoulos v. Vreeken*, 754 P.2d 960, 962 (Utah App.) (dicta), *cert. denied*, 765 P.2d 1278 (Utah 1988). "[A] reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research." *State v. Bishop*, 753 P.2d 439, 450 (Utah 1988) (quoting *Williamson v. Opsahl*, 416 N.E.2d 783, 784 (Ill. App. Ct. 1981)) (other citations and internal quotation marks omitted). Nor should an appellee should be required "to construct and then rebut the unbriefed issue." *State v. Brown*, 853 P.2d 851, 854 n.1 (Utah 1992).

Utah courts have not been shy about rejecting out of hand inadequately briefed arguments. *See, e.g., Valcarce v. Fitzgerald*, 961 P.2d 305, 313 (Utah 1998); *State v. Wareham*, 772 P.2d 960, 966 (Utah 1989) (declining to rule on whether a statute was unconstitutional on the ground that Wareham's brief "wholly lacks legal analysis and authority to support his argument"); *State v. Amicone*, 689 P.2d 1341, 1344 (Utah 1984); *State v. Streeter*, 900 P.2d 1097, 1100 n.3 (Utah App. 1995), *cert. denied*, 913 P.2d 749 (Utah 1996).

Defendant's second point does not satisfy the requirements of rule 24. The factual assertions contained in the point are unsupported by any record citation, and some are mere speculation, such as defendant's aspersion that "[t]he charge [was] intentionally made on the very day of trial in order to surprise and take undue advantage of the defense." Br. Aplt. at 9. Defendant cites a relevant case, but makes no attempt to apply it to the facts.

The point is also insufficiently analyzed. The heart of defendant's complaint is expressed in this sentence: "This changed the Information's charging period from January 1, 1998, to November 26, 1999." Br. Aplt. at 9. This terse statement does not explain the particulars of the amendment or how defendant believes his rights were prejudiced by it.

The claim is frivolous in any event. The amendment merely shortened the charging period. As the trial court aptly noted, shortening the charging period works "no bias to the defendant; if anything, it works to the disadvantage of the State." R. 284: 15.

POINT III

DEFENDANT'S CLAIM ARGUING THE STATE'S BURDEN OF PROOF IS INADEQUATELY BRIEFED

Defendant contends that "[t]he State presented no evidence concerning the defendant's/appellant's defense of inability to pay and failed to overcome said defense." Br. Aplt. at 3-4. Like defendant's second point, this point is inadequately briefed. It contains no citations to the record and no citations to legal authority. It fails on this ground alone.

Moreover, to the extent defendant claims the evidence at trial was insufficient to convict ("THE STATE DID NOT MEET ITS BURDEN . . . BECAUSE IT FAILED TO PROVE THAT DEFENDANT'S AFFIRMATIVE DEFENSE WAS INVALID"), the claim fails because defendant has made no attempt to marshal the evidence in support of the verdict as required by rule 24(9), Utah Rules of Appellate Procedure, and judicial opinions too numerous to require citation.

CONCLUSION

Defendant's conviction should be affirmed.

RESPECTFULLY submitted on 17 April 2002.

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CERTIFICATE OF SERVICE

I hereby certify that four copies of the foregoing Brief of Appellee were this 17 April 2002 mailed by first-class mail to the following:

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